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Situation of human rights in Iraq

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on the situation of human rights in Iraq, prepared by Andreas Mavrommatis, Special Rapporteur of the Commission on Human Rights, in accordance with Assembly resolution 55/115 of 4 December 2001 and Economic and Social Council decision 2001/250.

* A/56/150.

** In accordance with General Assembly resolution 55/222, part III, para. 10, this report is being submitted on 13 September 2001 so as to include as much updated information as possible.

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Interim report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq

Summary

During the reporting period, the Special Rapporteur, Mr. Andreas Mavrommatis, continued to receive information from various sources regarding alleged violations of human rights in Iraq. He also actively sought to collect as much reliable information as possible so as to be fully apprised of the situation of human rights in that country.

Moreover, the Special Rapporteur continued his efforts at establishing a constructive dialogue on human rights. On several occasions he reiterated his wish to visit Iraq without, however, receiving a positive reply from the Government. He also proposed that a governmental delegation from Baghdad be dispatched to Geneva to initiate a dialogue. Despite positive unofficial indications from the Government, at the time of writing, the Special Rapporteur has not received concrete indications from Iraq on how and when to begin the dialogue process. The Special Rapporteur hopes the Government of Iraq will soon provide positive and concrete indications in this regard.

In addition, the Special Rapporteur requested the Governments of two States neighbouring Iraq to allow him to visit their countries in order to discharge his mandate. He regrets to note that no replies to these requests have been received and urges all States Members of the United Nations to cooperate with him.

The Special Rapporteur continued to follow developments with regard to the humanitarian situation and shares the concern of the Secretary-General of the United Nations with regard to applications placed on hold by the Security Council Committee established by resolution 661 (1990).

The Special Rapporteur received communications alleging specific human rights violations regarding the human rights of women, persecution on account of religious affiliation, torture or cruel, inhuman or degrading treatment or punishment, extrajudicial killings and arbitrary executions, imposition of the death sentence for crimes not serious enough to justify it, persecution on account of political opinion and ethnicity, forced population transfers (Arabization), arbitrary arrest and detention, as well as lack of fair trial and due process of law. In particular, the Special Rapporteur received information regarding alleged harassment of women and allegations concerning the recent death of Ayatollah Hussein Bahr Al-Aloom.

The Special Rapporteur addressed several letters to the Government of Iraq with regard to these allegations. He is pleased to note that the Government did reply to some allegations in its written response to his previous interim report to the General Assembly (see A/C.3/55/5) and also notes that brief replies from the Government to his two most recent letters have been received. However, the Special Rapporteur urges the Government to reply specifically and in detail to all outstanding and future requests.

The Special Rapporteur also followed developments with regard to Kuwaiti prisoners of war and persons unaccounted for since the time of the Iraqi occupation of Kuwait, as well as missing Iraqis. He regrets to note the continued impasse in the Tripartite Commission and urges all parties involved to respect the non-political and humanitarian nature of this issue and to cooperate so as to find a solution.

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I. Introduction

1. The mandate of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq stems originally from Commission resolution 1991/74 of 6 March 1991 and was recently extended by Commission resolution 2001/14 of 18 April 2001, adopted at its fifty-seventh session. The present report is submitted pursuant to paragraph 5 (a) of resolution 2001/14, by which the Special Rapporteur is requested to submit an interim report to the General Assembly at its fifty-sixth session.

2. The present report, unless otherwise stated, covers the period from 1 December 2000 to 15 July 2001 and is to be read in conjunction with the report of the Special Rapporteur to the Commission on Human Rights at its fifty-seventh session (E/CN.4/2001/42) and his oral update to the Commission on the occasion of his presentation of that report on 29 March 2001. The present report also takes note of the debate on Iraq and resultant resolutions of both the Commission and the General Assembly.

3. The Government of Iraq, in its response to the aforementioned previous report of the Special Rapporteur, dismissed most of the allegations on human rights violations contained therein by claiming that they were based on information provided by hostile sources. According to the Government, the real violation of human rights in Iraq is the unjust embargo which has deprived the Iraqi people of fundamental freedoms and basic rights, particularly the right to live with dignity, the right to education and the right to work. As for the death penalty, the Government of Iraq pointed out that the allegations were unfounded. With regard to the judiciary, it was acknowledged that there exist cases that are within the jurisdiction of special courts.

4. During the reporting period, the Special Rapporteur held meetings in Geneva and New York with representatives of the Government of Iraq. He also met with other government representatives, including members of the Security Council, and with non-governmental organizations. In July 2001, the Special Rapporteur was in Kuwait and took that opportunity to be updated on the issue of Kuwaiti prisoners of war and persons unaccounted for since the Iraqi occupation of Kuwait.

5. During the reporting period, the Special Rapporteur also requested to visit two countries neighbouring Iraq and addressed letters to the respective Governments. However, despite personal approaches by the Special Rapporteur, no replies have as yet been received, which made it more difficult for the Special Rapporteur to elaborate a programme of work in connection with his mandate. In view of these circumstances, the Special Rapporteur believes the General Assembly as well as the Commission on Human Rights should urge all States to cooperate actively with him.

6. While the present report focuses primarily on developments that occurred and on information received during the reporting period, it also includes, as in the past, reference to past violations that have continuing effects.

7. The Special Rapporteur continued to receive written allegations, reports and communications claiming violations of human rights by the Government of Iraq. These allegations relate to torture or cruel, inhuman or degrading treatment or punishment, extrajudicial killings and arbitrary executions, imposition of the death sentence for crimes that are not serious enough to justify it, persecution on account of political opinion, ethnicity and religious affiliation, forced population transfers (Arabization), arbitrary arrest and detention, as well as lack of fair trial and due process of law. The Special Rapporteur also received information from various sources regarding the humanitarian situation in Iraq as a result of the sanctions regime imposed on that country.

8. The Special Rapporteur wishes to stress that he carefully examines all information and seeks to verify all allegations. Selected cases, where sufficient detail is provided and anonymity is not claimed, are referred to the Government of Iraq for reply. Cases which are not referred to the Government may still be taken into consideration and form part of the Special Rapporteur's analysis with regard to the identification of a pattern of action on the part of the Government which is in violation of human rights norms.

9. During the reporting period, the Special Rapporteur submitted a number of letters to the Government of Iraq containing allegations of human rights violations and often referred to them in general terms during his meeting with Iraqi representatives, mainly in Geneva. Some of the more serious

allegations were also discussed orally with representatives of Iraq, especially if a reply to the written communications had not been forthcoming. The Special Rapporteur was given unofficial or tentative replies, mostly in the form of general denial. On several occasions, he urged the Government of Iraq to provide him with specific and detailed replies to letters previously sent. The Special Rapporteur regrets to note that most of these individual letters have remained unanswered, although the Government did reply to some of these allegations in its written response to his previous interim report to the General Assembly (see A/C.3/55/5). However, the Special Rapporteur is pleased to note that during June and July 2001, it appears that the Government of Iraq was more willing to cooperate, as written replies to his two most recent letters were received. In the circumstances, the Special Rapporteur deems it necessary to include as annex 1 a list of all communications he has addressed to the Government of Iraq through the Permanent Mission of Iraq to the United Nations Office at Geneva. A sample of a letter regarding religious persecution, to which a more detailed reply has been received, as well as the reply itself, are both included as annex 2 (see paragraphs 28-31 below). The Special Rapporteur is encouraged by this apparent willingness of the Government to seek to provide detailed replies to his letters and hopes this is an indication of a more positive trend in future.

II. Methodology

10. From the outset, the Special Rapporteur had stressed that, in his view, part of his role is to seek to improve the promotion and protection of human rights in Iraq and, to this effect, the cooperation of the country concerned is essential. At the same time, he seeks to obtain reliable information, which can be a point of departure towards finding a way to improve the situation of human rights.

11. During several meetings in Geneva with representatives of the Government of Iraq, the Special Rapporteur stressed, as he had previously done, the need to establish a truly constructive dialogue on human rights. While reiterating the absolute necessity of personally visiting Iraq, he suggested that, in view of the current position of the Government not to permit visits such as that of the Special Rapporteur, a delegation could be dispatched from Iraq to Geneva to initiate this dialogue.

12. As the initial reaction of the Government did not appear to be negative, the Special Rapporteur suggested by letter dated 9 March 2001, addressed to the Permanent Representative of Iraq to the United Nations Office at Geneva, that the process could begin with a constructive dialogue on the right to life. This dialogue could take place in Geneva on a regular basis. The Special Rapporteur suggested that, in this context and as a first step, the dialogue could begin with a discussion on crimes which, according to Iraqi legislation, are punishable by death. During the fifty-seventh session of the Commission on Human Rights, the Representative of Iraq expressed willingness to cooperate with the Special Rapporteur and indicated that a delegation from Iraq would in fact be coming to Geneva shortly to begin the dialogue with him.

13. By letter dated 4 April to the Government of Iraq, the proposal of the Special Rapporteur was followed up with a suggested agenda containing two main items for an initial meeting with a delegation from Baghdad: (i) organizational matters; and (ii) initial discussion on the right to life, including, in particular, serious crimes that carry the death penalty in accordance with Iraqi legislation. These meetings were tentatively scheduled for May and then June.

14. When the two tentative times to begin the dialogue had passed without a definitive reply from the Government, the Special Rapporteur requested the Permanent Representative of Iraq to the United Nations Office at Geneva to meet with him on 23 June 2001. During this meeting, the Special Rapporteur expressed disappointment with regard to the progress achieved on establishing a constructive dialogue on human rights and pointed out that several months had passed since the Government had indicated that a delegation would be sent to Geneva to initiate the dialogue and that even at that stage no indication had been received as to when the dialogue would begin. The Special Rapporteur also took the opportunity to urge the Government yet again to reply to outstanding and future letters.

15. Despite these efforts made by the Special Rapporteur and the informal indications from the Government of Iraq, the Special Rapporteur regrets to note that, as at the drafting of the present report, no concrete and official response has been received from

the Government indicating in more detail how it intends to cooperate with the Special Rapporteur.

16. On 10 July 2001 the Associated Press carried a press release which, inter alia, stated that, according to a spokesman for the Foreign Ministry, Iraq was prepared to hold a "constructive dialogue" with the Commission on Human Rights. The official Iraqi news agency quoted an unnamed spokesman for the Foreign Ministry as saying that the Iraqi Government would like to assert that it was endeavouring to deepen the principles of human rights on all levels despite the difficult economic and political situation it was facing. Iraq was ready for a constructive dialogue with the Commission, the spokesman said. As it was unclear whether this statement was referring to the dialogue proposed by the Special Rapporteur or to another process, clarification was sought.

17. Although the dialogue on human rights proposed by the Special Rapporteur would be a step in the right direction and would certainly be beneficial, it cannot be a substitute for a visit by him to Iraq. Such a visit would allow the Special Rapporteur to study the situation of human rights on the ground and to verify the truthfulness of the accounts received, as well as to engage the Government at an appropriate level. At the time of writing, the Government of Iraq had not yet responded positively to the Special Rapporteur's request to visit the country. The Special Rapporteur would like to take this opportunity yet again to urge the Government officially and strongly to reply positively to his request and allow him to visit Iraq, thereby giving actual content to the positive statement, referred to above, published by the Associated Press.

III. The humanitarian situation

18. On every appropriate occasion, the Special Rapporteur has pointed out that, in carrying out his mandate, he seeks to collect information from a broad variety of sources and that he wishes to be fully apprised of anything that, directly or indirectly, intentionally or unintentionally, has adverse effects on the human rights situation in Iraq. Since his appointment as Special Rapporteur, he has therefore studied the humanitarian situation in Iraq as well.

19. In his above-mentioned report to the Commission on Human Rights at its fifty-seventh session, the Special Rapporteur elaborated at length on this issue. The present interim report is limited to briefly updating information contained in the report to the Commission.

20. The Special Rapporteur continues to be concerned about the unintended human rights consequences of the international embargo against Iraq. In this regard, he also associates himself with the concern expressed by the Secretary-General in his report of 18 May 2001 to the Security Council pursuant to paragraph 5 of Security Council resolution 1330 (2000) (S/2001/505). In paragraph 29 of the report, the Secretary-General expresses his grave concern that since his report in March 2001 (S/2001/186), the total value of applications for contracts placed on hold by the Security Council Committee established by resolution 661 (1990) has increased from $3.1 billion to $3.7 billion, as at 14 May 2001.

21. The Special Rapporteur also notes that, in its report of June 2001 on its activities in 2000 and 2001 in Iraq, the International Committee of the Red Cross states that, while the oil-for-food programme entered its ninth phase in December 2000, it is becoming increasingly clear that the programme in its current form does not respond to a number of Iraq's priority needs. The most affected sectors are health care, drinking water production, sewage evacuation and electricity production.

22. The Special Rapporteur also followed with interest recent developments regarding the issue of the so-called "smart sanctions". He expresses the hope that an agreement between all concerned may be reached to alleviate the humanitarian situation.

IV. Women

23. Keeping a gender perspective in mind, the Special Rapporteur actively continued to seek information with regard to the human rights situation of women in Iraq. He continued to receive several reports and allegations concerning violations of women's rights by the Government of Iraq.

24. The Special Rapporteur received information that the Iraqi newspaper, *Az-zawrah*, in its issue No. 199 of 12 April 2001, had allegedly published a communiqué entitled "News concerning women", regarding an official decree on women belonging to a family of which another member, wanted by the authorities, has left the country. In accordance with this decree, the women in question can allegedly be arrested in order to

apply pressure on the family member who has left the country.

25. In a letter dated 27 June 2001, the Special Rapporteur wrote to the Government of Iraq enquiring as to the veracity of this claim. By letter dated 2 July 2001 from the Permanent Mission of Iraq to the United Nations Office at Geneva, the Government briefly denied the existence of the communiqué, stressing that *Az-zawrah* is not an official newspaper. However, it made no reference to the decree in question.

26. The Special Rapporteur has continued to seek information regarding the alleged execution of prostitutes, as mentioned in his previous report to the Commission on Human Rights at its fifty-seventh session. In the present reporting period, several sources again brought this issue to the attention of the Special Rapporteur and provided additional information. In particular, he received information alleging that the paramilitary units under the name of "Feda'iyee Saddam" have conducted a terror campaign against women and summarily executed many women suspected of being prostitutes. However, the information received is sometimes conflicting regarding numbers, dates, names, as well as the reasons for the execution.

27. The Special Rapporteur raised this issue at several meetings with the Permanent Representative of Iraq to the United Nations Office at Geneva and asked for a response to the letters previously sent to the Government. On 29 January 2001, the Special Rapporteur, recalling previous communications on this issue, requested the Government of Iraq to reply on whether prostitution is a criminal offence punishable by death. At the time of writing, the Government had not formally replied to any of these requests. However, the Special Rapporteur was unofficially informed by the Government that the death sentence applies only to persons exploiting women or responsible for trafficking in women. This is another example as to why it is imperative for the Government of Iraq to provide complete replies to the letters of the Special Rapporteur in order for him to be in a position to assess the situation and reach accurate conclusions. The Special Rapporteur is of the view that prostitution as well as exploitation of women are crimes not serious enough to warrant the imposition of the death sentence.

V. Religious persecution

28. The Special Rapporteur continued to receive information from various sources reporting discrimination of religious groups and persecution on account of religious affiliation.

29. With regard to the Shia Muslim community, the Special Rapporteur continued to receive reports alleging human rights violations. In particular, in June and July 2001, the Special Rapporteur received several communications regarding the death on 22 June 2001 of a leading Shia scholar, Ayatollah Hussein Bahr Al-Aloom. According to these allegations, approximately 10 days before his death the ayatollah had refused to express publicly his approval of the appointment of Qusay Hussein, President Saddam Hussein's son, to the Regional Leadership of the Ba'ath Party. The allegations state that the ayatollah was found dead in his library, in Najaf on 22 June in the morning. According to this information, the body was rushed for burial, no post-mortem was allowed and the burial took place under heavy security.

30. In a letter dated 26 June the Special Rapporteur wrote to the Government of Iraq with regard to this allegation. By letter of 21 July 2001, the Permanent Mission of Iraq to the United Nations Office at Geneva replied to the allegation, stating that the ayatollah had died of cardiac arrest at the age of 70 on 22 June 2001. The letter also states that the burial ceremony had been attended by the prefect of Najaf, religious personalities and dignitaries, local leaders as well as representatives from different strata of society. It further states that both official and non-official Iraqi media had issued letters of condolence and obituaries. The letter also explains the details of the funeral, how it was not rushed and took place with a security presence which is normal for a person of such stature. In view of the fact that this is one of the first instances that a written reply to a written request by the Special Rapporteur has been received, the Special Rapporteur has decided to include as annex 2 a copy of his original letter as well as the reply from the Government (see paragraph 9 above).

31. The Special Rapporteur intends to follow up the issue of religious persecution by actively seeking further information.

VI. Extrajudicial killings, torture, cruel, degrading and inhuman treatment and punishment

32. The Special Rapporteur continued to receive information from several sources presenting allegations of extrajudicial killings, torture, cruel, degrading and inhuman treatment and punishment, including cases of families in Iraq of Iraqi refugees living abroad that are being harassed in order to induce the refugees to cease their political activity against the Government. He also received information suggesting that persons who had allegedly insulted the President of Iraq have had their tongues amputated without trial. The Special Rapporteur is examining the information received and proposes to present his findings in his next report to the Commission on Human Rights.

33. The Special Rapporteur wishes to recall that he has addressed several letters to the Government of Iraq with regard to these issues. These were referred to in his previous report to the Commission at its fifty-seventh session. At the time of writing, the Special Rapporteur had not received a specific and detailed written reply from the Government.

34. In particular, the Special Rapporteur wishes to recall that, on 24 November 2000, he addressed a letter to the Government of Iraq regarding an allegation concerning the execution on or about 16 December 1998 of Staff General Kamil Aziz al-Janabi. According to the allegation, the general was summarily executed by the son of President Saddam Hussein. The letter was already noted in the above-mentioned previous report of the Special Rapporteur. In view of the seriousness and the specific and detailed nature of the allegation, it was to be expected that an immediate reply from the Government would be forthcoming. However, at the time of writing, no reply had been received. The Special Rapporteur urges the Government to do so without further delay.

VII. Mass relocation of non-Arabs and Arabization of areas from which they are expelled

35. The Special Rapporteur continued to receive information regarding allegations of human rights violations against minorities and of mass relocations of non-Arabs and Arabization of areas from which these persons are expelled. As noted in his report to the Commission at its fifty-seventh session and in his interim report to the General Assembly at its fifty-fifth session (A/55/294), the Special Rapporteur had previously addressed several letters to the Government of Iraq on these and similar issues. At the time of writing, he had not received a specific written reply from the Government with regard to these allegations.

36. The Special Rapporteur has sought and received recent and detailed information on instances of expulsions, which are being transmitted to the Government of Iraq. He expects to receive complete replies to these specific allegations.

VIII. Missing persons

A. Kuwaiti prisoners of war and persons unaccounted for since the time of the Iraqi occupation of Kuwait

37. The Special Rapporteur regrets to report that, since the submission of his report to the Commission on Human Rights, there has been no change in the state of affairs with regard to seeking a solution to the impasse in the Tripartite Commission.

38. The Special Rapporteur wishes to reiterate that nothing and nobody can justify lack of cooperation in respect of efforts to trace the fate of persons unaccounted for. He has always stressed that, irrespective of the validity or otherwise of any arguments by the Government of Iraq not to participate in the work of the Tripartite Commission, there can always be alternative methodologies such as indirect, proximity or parallel efforts to solve an urgent humanitarian issue such as the one in question. In this regard, the Special Rapporteur welcomes information to the effect that a "parallel approach" in respect of the missing Kuwaitis has been initiated recently. It is absolutely crucial that all parties respect the purely humanitarian and non-political nature of this issue and do their best for a speedy resolution.

B. Missing Iraqis

39. As there have been no developments with regard to missing Iraqis the Special Rapporteur wishes to reiterate his readiness to assist in any way possible in solving this issue.

C. Iraqis missing as a result of expulsions that occurred in the 1980s

40. There have been no developments regarding Iraqis missing as a result of expulsions in the 1980s. The Special Rapporteur proposes to take up the matter again, as appropriate.

41. To conclude this part of his report, the Special Rapporteur wishes to urge all concerned to redouble their efforts and investigate in depth and thoroughly all information made available to them on the question of Kuwaiti prisoners of war or persons unaccounted for since the Iraqi occupation of Kuwait. The same applies to all cases of missing persons, including those Iraqis missing during the same time as well as those expelled in the 1980s.

IX. Conclusions and recommendations

42. The Special Rapporteur wishes to reiterate his recommendations that all humanitarian concerns should be kept under constant review and necessary adjustments should continue to be made to ensure that the humanitarian needs and the long-term adverse effects of the embargo are addressed and the suffering of the people is alleviated.

43. The Special Rapporteur urges the Government of Iraq to continue its dialogue with the United Nations in a spirit of compromise and hopes that results can be achieved as speedily as possible.

44. The Special Rapporteur calls on the Government of Iraq to take effective measures to remove any restrictions on the exercise of religious freedom and permit religious leaders, scholars and others to perform their religious functions freely.

45. The Special Rapporteur reiterates his call to the Government of Iraq to review and revise laws permitting the imposition of the death penalty, consider a moratorium on executions and begin a dialogue with the Special Rapporteur on matters relating to the supreme right to life.

46. The Special Rapporteur urges the Government of Iraq to examine all allegations of violations of human rights and take the necessary action to ensure that such violations cease forthwith.

47. The Special Rapporteur calls upon the Government of Iraq to examine carefully all allegations of forced relocations and ensure that no person is relocated against his or her will.

48. The Special Rapporteur urges the Government of Iraq to take all necessary measures to investigate in depth the fate of all missing persons.

49. Given the humanitarian nature of the question of the Kuwaiti prisoners of war and persons unaccounted for, the Special Rapporteur urges the Government of Iraq to join again in the work of the Tripartite Commission and its Technical Subcommittee and, pending such a decision, to take steps to ensure that the necessary investigations in respect of pending cases are carried out and that relevant information is related, as appropriate, to its destination.

50. The Special Rapporteur calls on the Government of Iraq to pay particular attention to allegations of human rights violations against women and, in particular, review any legislation that imposes harsh penalties on women or permits harassment of innocent women.

Annex I

List of letters from the Special Rapporteur to the Government of Iraq and replies received as at 22 July 2001

Letter from the Special Rapporteur	*Reply received from the Government of Iraq*
• 22 May 2000 Persecution of Shi'a and other allegations	• Individual specific written reply outstanding (Some information provided in A/C.3/55/5)
• 14 June 2000 Raid against the Al-Rahma tribe, execution of officers at Al-Rashid camp and other allegations	• Individual specific written reply outstanding (Some information provided in A/C.3/55/5)
• 20 June 2000 Killing of civilians	• Individual specific written reply outstanding (Some information provided in A/C.3/55/5)
• 10 August 2000 Execution of Sabah Fattah Amin	• Individual specific written reply outstanding (Some information provided in A/C.3/55/5)
• 10 August 2000 Arabization	• Individual specific written reply outstanding (Some information provided in A/C.3/55/5)
• 15 August 2000 Armed raid on villages	• Individual specific written reply outstanding (Some information provided in A/C.3/55/5)
• 15 November 2000 Allegations of torture	• Written reply outstanding
• 17 November 2000 (Forwarded by the Office of the United Nations High Commissioner for Human Rights) Prostitution and desecration of national symbols	• Written reply outstanding
• 24 November 2000 Execution of Staff General Kamil Aziz Al-Janabi	• Written reply outstanding
• 29 January 2001 (Forwarded by the Office of the United Nations High Commissioner for Human Rights) Follow-up request for a reply to the letter of 17 November 2000	• Written reply outstanding

Letter from the Special Rapporteur	*Reply received from the Government of Iraq*
• 9 March 2001 Letter on initiating a dialogue on human rights	• Written reply outstanding
• 4 April 2001 (Forwarded by the Office of the United Nations High Commissioner for Human Rights) Proposed agenda for the first meeting with the Iraqi delegation	• Written reply outstanding
• 26 June 2001 Death of Ayatollah Hussein Bahr Al-Aloom	• Reply received by letter of 4 July (misdated 21 May 2001)
• 27 June 2001 Women arrested as a means of bringing pressure to bear on family members abroad	• Reply received by letter of 2 July 2001

Annex II

Sample letter dated 26 June 2001 from the Special Rapporteur addressed to the Permanent Representative of Iraq to the United Nations Office at Geneva and reply of 4 July 2001 regarding the death of Ayatollah Hussein Bahr Al-Aloom

I have the honour to address you in my capacity as Special Rapporteur on the situation of human rights in Iraq pursuant to Commission on Human Rights resolution 1991/74 of 18 February 1991, as renewed for a further year by resolution 2001/14 of 18 April 2001.

The mandate set forth in resolution 1991/74 requests the Special Rapporteur to make a through study of the violations of human rights by the Government of Iraq, based on all information the Special Rapporteur may deem relevant, including information provided by intergovernmental and non-governmental organizations and any comments and material provided by the Government of Iraq.

Pursuant to this mandate, I would like to bring to the attention of your Excellency's Government information conveyed to me, which reports that, allegedly on 22 June 2001, Ayatollah Hussein Bahr Al-Aloom was killed under mysterious circumstances in his office in Iraq. Reportedly, a post-mortem examination did not take place and the body was rushed for burial under heavy security presence.

Without in any way implying conclusions as to the veracity of this allegation, I would appreciate a reply from your Excellency's Government to the present information at your earliest convenience and not later than one week of the date of the present letter.

(*Signed*) Andreas **Mavrommatis**

Reply dated 4 July 2001

The Permanent Mission of Iraq to the United Nations Office and other international organizations at Geneva presents its compliments to the Special Rapporteur of the Commission on Human Rights on the situation of human rights in Iraq and has the honour to transmit herewith the response to the allegations contained in the Special Rapporteur's letter of 23 June 2001 concerning the death of Ayatollah Hussein Bahr Al-Aloom.

The Permanent Mission would like to point out that the very learned Mr. Hussein Muhammad Taqi Bahr Al-Aloom died of a heart attack on 22 June 2001 at the age of over 70 years, having devoted his life to learning and research. A grand funeral was held for him and was attended by the prefect of Najaf, a number of officials, clerics, tribal chiefs and various other segments of society. On behalf of the President of the Republic, the prefect also attended the Fatihah recitation ceremony. We should also like to point out that the Iraqi press, both official and unofficial, published an obituary on the deceased, giving details about his life and his national and nationalistic views on crucial issues. In addition, the Al-Jazira satellite television channel broadcast the funeral ceremonies on 1 July 2001.

Enclosure

Response to the allegations regarding the late Hussein Bahr Al-Aloom contained in the letter of the Special Rapporteur on the situation of human rights in Iraq

1. Mr. Hussein Bahr Al-Aloom was born in 1929 and was 72 years of age.

2. He suffered from cardiopathy, diabetes and hypertension and was frequently hospitalized. Many times he occupied a bed at Jadiriyah national hospital and Ibn Al-Baitar government hospital in Baghdad, which specialize in heart diseases, under the case of heart specialist Dr. Omar Al-Kabisi, who as a result of his lengthy treatment of the deceased became his personal friend, since the deceased constantly consulted him whenever he came to Baghdad and sometimes the doctor visited the deceased in the town of Najaf.

3. The deceased had travelled to Jordan for treatment, where he underwent catheterization.

4. At 9 a.m. on Friday, 22 June 2001, the deceased, after suffering a heart attack at home, was transported to a hospital, accompanied by his adopted daughter's husband, Talib Mushtaq and his neighbour. He died upon arriving at the hospital.

5. No post mortem examination was performed on his body because the cause of death was known, as evidenced by the death certificate (coronary thrombosis resulting in cardiac arrest). In addition, a considerable number of Najaf physicians had had him under their constant care and were in agreement concerning his state of health. Had an autopsy been done on him, some people would have said that it was a desecration of the body of a religious scholar of repute who had played a significant role in society, and would have made other such remarks.

6. After his death, in accordance with his family's request and the traditions followed in Najaf in respect of funerals of religious authorities, at 11.30 a.m. on Friday, 22 June, his body was transported to Karbala, where a procession to the shrines of Al-Husayn ibn Ali and Abbas ibn Ali, may peace be upon them, took place. The mortal remains were viewed by a large number of persons from Karbala and the custodians of the two shrines. At 1.30 p.m. on the same day they took the body back to Najaf. When they arrived at the Tusi mosque, where the deceased had his office and where his family burial place is located, his mortal remains were visited by a large number of people gathered inside and outside the mosque.

7. The body was transported from the Tusi mosque to the Haidari shrine, where the religious authority, Muhammad Sa'id Al-Hakim, said prayers for him, and then returned to Tusi mosque, where he was buried. Foremost among those attending the funeral were the prefect and officials of Najaf, together with a large number of religious students and ordinary citizens. The city had not seen such a funeral since the death of the religious leader Abd Al-Muhsin Al-Hakim. Owing to the large number of persons attending, the funeral procession lasted one and a half hours, despite the fact that the distance between the Haidari shrine and the Tusi mosque is no more than 150 metres.

8. His family held a three-day mourning ceremony, which was extended for a further day by the body of religious students in Najaf. During the ceremony, the religious leader Ali Al-Sistani held an evening banquet in honour of the soul of the deceased; his son, Muhammad Rida Al-Sistani, was in charge of the banquet arrangements.

9. The funeral was attended and persons presenting their condolences were received by the deceased's brother, Ja`far Bahr Al-Aloom, his nephew, Mahmud Abbas Bahr Al-Aloom, the husband of his adopted daughter, Talib Mushtaq, and a considerable number of members of the Bahr Al-Aloom family. The funeral and burial ceremonies mentioned above were not conducted hastily; rather, all the formalities took place in accordance with the timing determined by the family of the deceased. As for the "security presence", it was normal and there was no reason why that presence should be "heavy" (intense), as has been alleged. All the ceremonies concluded in a perfect manner and as befits the religious stature of the deceased.

10. The facts we have mentioned are not unknown to anyone in Najaf, or indeed anyone in Iraq. The Special Rapporteur can compare the facts with the fabrications and lies made up by those who look for opportunities to fish in troubled waters. Even death, a right in which every Muslim believes, does not escape their exploitation and their attempts to turn it to account for their own narrow interests.

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Human rights defenders

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report prepared by the Special Representative of the Secretary-General on human rights defenders, Hina Jilani, in accordance with General Assembly resolution 55/98 of 4 December 2000 and Commission on Human Rights resolution 2000/61 of 26 April 2000, as endorsed by Economic and Social Council decision 2000/220 of 16 June 2000.

* A/56/150.

** In accordance with General Assembly resolution 55/222, part III, paragraph 10, the present report is being submitted on 10 September 2001 so as to include as much updated information as possible.

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I. Introduction

1. Pursuant to Commission on Human Rights resolution 2000/61 of 26 April 2000, the Special Representative of the Secretary-General on human rights defenders is required to submit an annual report to the Commission and to the General Assembly on her activities and on the development and implementation of her mandate. The Special Representative submitted her first report to the Commission at its fifty-seventh session (E/CN.4/2001/94).

2. The mandate of the Special Representative was established by Commission resolution 2000/61. The Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted by consensus by the General Assembly in its resolution 53/144 of 9 December 1998, forms the basis in determining and developing the scope of the mandate. Articles 3 and 4 of the Declaration define the juridical framework for the implementation of the mandate.

3. The methods of work adopted by the Special Representative are largely based on those applied by other thematic mechanisms, with due regard for the specificity of her mandate. Communications consist of urgent appeals and allegation letters transmitted to Governments and in cases of particular gravity she may also issue a press statement. Since she initiated her work in September 2000, the Special Representative has received numerous complaints related to human rights defenders in all parts of the world. Most were submitted to the Governments concerned, in accordance with her methods of work. From October 2000 to August 2001, the Special Representative transmitted 83 urgent appeals to Governments as well as nine allegation letters. Six press statements were issued during that period. In order to assist organizations, individuals or any victims of human rights violations in their submission of allegations to the Special Representative, guidelines have been established and put on the web site of the Office of the United Nations High Commissioner for Human Rights (http://www.unhchr.ch) for better accessibility.

4. The Special Representative also started to establish direct contacts with other United Nations agencies such as the United Nations Development Programme, the United Nations Children's Fund and the International Labour Organization, as well as with regional organizations, in particular the Organization of African Unity, the Organization of American States, the Organization for Security and Cooperation in Europe, the European Commission and the Council of Europe.

5. Close collaboration was established with international and local non-governmental organizations (NGOs) at the early stage of the mandate. The Special Representative had the opportunity to attend two regional consultations organized by NGOs: one in Senegal concerning the situation of human rights defenders in West Africa and one in Mexico on the issue of human rights defenders in Latin America. She would like to take the opportunity to thank the organizers of those meetings, Amnesty International and the organizing committee of the Latin American Consultation on Human Rights Defenders,[1] as well as the Governments of Senegal and Mexico, for being the host countries.

6. The Special Representative also undertook her first country visit, which took place in Kyrgyzstan from 30 July to 4 August 2001. A report on this visit will be published in the near future and presented to the Commission on Human Rights at its fifty-eighth session.

7. The present report is the first submitted to the General Assembly by the Special Representative. It contains issues of special concern to her arising out of the communications she has received and from consultations with Governments, NGOs and individual defenders in the course of the implementation of her mandate.

8. It is also a part of the responsibilities of the Special Representative to establish cooperation and conduct dialogue with Governments and other interested actors on the promotion and effective implementation of the Declaration. In her report the Special Representative apprises the Assembly of the trends and conditions observed by her that undermine the rights enshrined in the Declaration and threaten the security of human rights defenders. One purpose of drawing attention to difficulties in the way of improving the environment for the enjoyment of the rights recognized in the Declaration is to identify areas in which there is a need for constructive dialogue and meaningful initiatives to improve the situation.

II. Issues of special concern in the protection of human rights defenders

A. Impunity in cases of threats and attacks against human rights defenders

9. International and regional conventions provide for the right to an effective remedy for anyone whose rights and freedoms have been violated.[2] In addition, the United Nations and regional human rights bodies have expressed serious concern over the climate of impunity surrounding violations of human rights. The United Nations Human Rights Committee[3] and the Inter-American Commission on Human Rights of the Organization of American States[4] have emphasized the obligation of States to investigate and to impose suitable punishment on those found guilty of human rights abuse and to ensure the victim's right to reparations. A commitment to eradicate impunity also finds mention in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights on 25 June 1993 (see A/CONF.157/24 (Part I), chap. III, sect. II, para. 91). Yet the culture of impunity persists and has become the most serious human rights problem in many countries. It is also a significant factor in enhancing the risks attached to the work of human rights defenders.

10. Exposing human rights violations and seeking redress for them is largely dependent on the degree of security enjoyed by human rights defenders. Addressing the issue of impunity with respect to defenders is therefore a critical element in the promotion and protection of human rights.

11. The Special Representative notes with concern that Governments have, in general, either failed or neglected to investigate complaints of attacks and threats against human rights defenders and to punish the perpetrators. Cases of threats, attacks and acts of intimidation against defenders are frequently reported and complaints have generally been filed for these violations with the authorities. Despite this, there is a lack of action in a majority of cases.

12. The fact that extrajudicial killings and death threats are not investigated is of great concern to the Special Representative. In this regard, since the beginning of her mandate, the Special Representative has transmitted to various Governments 31 cases of death threats as well as 11 communications concerning the issue of impunity. The response of Governments in cases brought to their attention by the Special Representative has not been satisfactory. It is only in very few cases that results or even encouraging progress can be reported to date.

13. In one case brought to the attention of the Special Representative, it was alleged that a prominent human rights lawyer was subjected to an assassination attempt by three masked men and that his wife and eight-year-old child were attacked by an unknown assailant later on. It was indicated that the police have done little to investigate these attacks and have not provided effective security to the family. In another case, a member of a human rights organization was reportedly killed by two unidentified men. It was claimed that despite repeated appeals, the Government has refused to order a judicial inquiry into allegations that the police were actively involved in the murder through the hiring of ex-members of an armed group.

14. While structural problems and the lack of resources may be a constraint in pursuing such cases, in reality it is the absence of political will on the part of Governments that allows impunity for human rights violations to prevail. In cases where agencies of the State are directly responsible, there is even less expectation of identifying or bringing perpetrators to justice. Human rights defenders, often targeted for their criticism of government action or omission leading to human rights violations, are afforded the least protection of the law.

15. The lack of transparency and accountability in the functioning of State institutions has added to the culture of impunity. It has been observed that, in particular, violations committed by the military and other security forces are seldom investigated or punished. Even where there have been prosecutions, sentences have been light.

16. Human rights defenders are being targeted increasingly by non-State entities, either linked directly or indirectly to the State or private groups benefiting from the inaction of the State. The inability or unwillingness of States to call these entities to account for action against human rights defenders has increased their vulnerability and has strengthened public perception that human rights can be violated with impunity.

17. In these circumstances it is difficult to expect that human rights defenders can perform their role with any degree of security or enjoy the rights recognized in the Declaration. Commitment to the protection and promotion of human rights is incomplete without ending the culture of impunity. Human rights groups, NGOs and individual defenders have pointed to impunity as a major source of consternation for them. Many defenders have been especially targeted for voicing their protest against exemption from punishment for past and current violations of human rights.

18. In this regard, the Special Representative draws attention to article 9 of the Declaration,[5] which addresses the issue of impunity. She also recalls the reports submitted by Louis Joinet and El Hadji Guissé to the Subcommission on Prevention of Discrimination and Protection of Minorities, pursuant to its decisions 1996/119 and 1996/24, respectively, on the question of the impunity of perpetrators of violations of civil and political rights (E/CN.4/Sub.2/1997/20/Rev.1) and of economic, social and cultural rights (E/CN.4/Sub.2/1997/8). The Special Representative sees the progress towards the establishment of the International Criminal Court as a positive development towards ending the climate of impunity. The report of the Secretary-General on impunity (E/CN.4/2001/88 and Corr.1), submitted to the Commission on Human Rights at its fifty-seventh session pursuant to its resolution 2000/68, contains replies received from some States providing information on legislative, administrative or other steps they have taken to combat impunity for human rights violations. The Special Representative appreciates the steps that are proposed or have been taken for the promotion and protection of human rights through action to combat impunity.

19. It is, nevertheless, a reality that the mere existence of legislation or administrative procedures has not necessarily been a guarantee against impunity for human rights abuse. Stronger political will to tackle impunity must complement these measures. The Special Representative urges States to give due attention to this serious human rights problem and to take effective measures to address both structural and political problems that are causing impunity for human rights violations to prevail.

B. Legal actions against human rights defenders

20. Human rights defenders are increasingly being subjected to legal action because of their activities for the promotion and protection of human rights and fundamental freedoms. The Special Representative sent 20 communications to several Governments in regard to this issue.

21. Laws on public order, morality, national security or emergency and sedition, or regulations on forming associations or receiving foreign funding are frequently being used to deprive defendants of their liberty, freedom of association, freedom of expression and assembly and freedom to carry on their profession. Reports received by the Special Representative and other information gathered by her strongly indicate that criminal prosecution and judicial repression are being used to silence human rights defenders and to pressure them into discontinuing their activities. These actions amount to attempts at controlling civil society and undermining its freedom, independence, autonomy and integrity.

22. Exposure and criticism of policies and practices that violate human rights have resulted in legal proceedings against human rights defenders as a retaliatory measure. Many have suffered long drawn-out trials, sometimes under procedures that, reportedly, fall far short of the standards of a fair trial. Organizations are forbidden to function by judicial or administrative decrees and members are prosecuted under various laws and regulations with complete disregard for the freedom of association. Provisions of laws that place restrictions on receiving foreign funding have been used to initiate criminal proceedings against human rights organizations and individual defenders. There have been complaints alleging complicity of Governments in creating internal disputes leading to the suspension of the activities of human rights organizations under judicial orders.

23. The reporting of human rights violations has frequently led to charges of spreading false information, defamation of authorities or disturbance of public order. The peaceful expression of views on human rights issues has been termed as "incitement", civic education programmes have led to charges of sedition and criticism of discriminatory practices has been prosecuted as an offence against religion. In a case brought to the attention of the Special

Representative, it was reported that a member of a human rights organization was charged with defamation after accusing members of local militia groups of being responsible for dozens of cases of disappearance and extrajudicial execution. In another case, it was reported that legal proceedings had been launched against a women's rights activist in order to annul, on the grounds of apostasy, a marriage of 37 years, based on an interview according to which she was critical of certain religious practices.

24. Concerns expressed about the independence and impartiality of the judiciary or opinions regarding judgements and judicial procedures in human rights cases have invited proceedings under the contempt of court laws. Academic freedom has come under grave threat in some countries, where writings and discussions with students on human rights issues have led to criminal prosecution against academics. In this regard, in one of the cases transmitted by the Special Representative, it was reported that some professors were accused of "inciting students to violence" after a meeting on human rights and academic freedom.

25. Governments have demonstrated a disturbing tendency to view human rights activity as being against national interest and a threat to national security. Because of undue sensitivity towards criticism of their policies abroad, Governments have, at times, disallowed participation of human rights defenders in international or regional meetings and conferences. Those participating in international forums and speaking of social, economic, political or legal issues in the context of human rights in their countries have been charged with injuring national interest. This sensitivity is, however, not limited to criticism aired outside the country.

26. The right to publish, impart and disseminate information and knowledge on all human rights, even at the national level, has been severely restricted. In some countries, national security legislation has frequently been used to curb legitimate activities in defence of human rights. In one case brought to the attention of the Special Representative, it is alleged that environmental activists who drew attention to acts seriously damaging the environment and informed the public about the dangers of such acts to human life and health, were charged with espionage. In another case, women's rights activists protesting against custodial rape were reported to have been arrested for insulting the security forces by these accusations.

27. Human rights defenders, who organize, participate in or monitor peaceful gatherings, meetings and demonstrations have been arrested, tried and sentenced under laws that restrict the freedom of assembly. Charges under which action has been taken against defenders have ranged from holding unauthorized demonstrations to violating the established order and incitement to civil disobedience or revolt. In one of the cases transmitted by the Special Representative, a human rights activist was in detention and charged with breaching the law on demonstrations while she was taking part in a ceremony to protest against prison raids.

28. Sanctions against many lawyers working for the defence of human rights have included prohibitions imposed on them to practise their profession. Human rights activists have even been forced to resign from their organizations and deprived permanently of their right to be members of any association as a punitive measure. In this connection, the Special Representative raised with a Government the case of a lawyer who was sentenced to prison for five years for illegal practise of his profession and beaten by the police during his arrest. This lawyer, a member of a human rights organization, was well-known for defending people who would face prosecution for their political opposition to the Government.

29. Criminal proceedings against defenders are at times initiated by politicians, powerful landowners and big business concerns, in order to cause harassment in retaliation for activities of human rights defenders in advocacy of land rights, environmental protection, rights of workers or exposure of corruption. Criminal charges for belonging to armed or terrorist groups have also been brought against human rights defenders following the planting by the police of leaflets and arms in their home. This form of harassment by State and non-State entities has forced many human rights defenders to flee the country.

C. Intelligence activities aimed at human rights defenders

30. Human rights defenders have complained of activities of intelligence agencies, both civil and military, that have obstructed their work, violated their privacy and placed them at a higher risk of harassment and intimidation. Files are systematically maintained on activists and members of NGOs. Fears have been

expressed by human rights activists in some countries that information in these files is leaked or shared by design with paramilitary groups, which has seriously undermined their security.

31. There are numerous complaints also of surveillance by intelligence agencies and police. Many human rights defenders and members of their families are constantly followed and watched in very obvious ways. Children are approached and questioned to gain information on the activities and family lives of parents. Offices of NGOs are placed under surveillance and in some cases it is reported that the premises are filmed to monitor all visitors.

32. Mail and faxes are commonly intercepted, Internet facilities cut off and telephones tapped. Incidents of offices being broken into and theft of information have been reported. Computers and disks containing information on the work of NGOs are usually what are carried away. Some organizations have reported that their membership list was stolen in these break-ins. Despite these thefts being reported to the authorities, investigations are seldom carried out, strengthening victims' suspicions of official involvement in many of the incidents.

33. Members of human rights NGOs are frequently summoned by intelligence agencies and questioned both on the information they publish and their activities. Human rights defenders are also very often threatened by intelligence services with arrest or prosecution before they publish any report on human rights or on sensitive issues such as corruption or trafficking of women. In many cases, organizations have been asked to produce their accounts for checking. Offices and homes of human rights defenders are searched, sometimes without any legal procedure being followed. Allegations have also been made that agents of intelligence services infiltrate and become members of human rights organizations in order to supply information about their work and activities.

34. Fifteen communications dealing with the issue of intelligence activities have been transmitted by the Special Representative to Governments. In one case, it has been reported that heavily armed men raided the offices of two human rights organizations and assaulted members of both staffs. The assailants stayed for an hour, throwing staff members on the floor, putting pistols to their heads, forcing the men to strip and repeatedly threatening staff members with death. Moreover, the assailants reportedly stole the organizations' computers containing records of human rights cases under investigation, other office equipment and one of the group's vehicles. It has been alleged that this act of intimidation was committed by members of the armed forces and that military intelligence agencies were involved.

35. In another case, an indigenous leader, who was organizing a public meeting to celebrate the formation of an indigenous organization, was forced by the police and intelligence bureau to leave the auditorium and was then arrested without warrant and put in jail.

D. Propaganda and smear campaigns against human rights defenders

36. Smear campaigns against human rights defenders have become a tool increasingly used to discredit their work. Government-controlled media are used for slanderous accusations and attacks on the honour and reputation of non-Government human rights organizations and individual defenders. Many such campaigns carry comments of senior government officials, targeting human rights defenders who criticize or expose repressive State policies or action. Such organizations are either accused of being in the political opposition or portrayed as enemies of the people "serving foreign powers for financial gain". Some Governments have responded to criticism of their human rights record by denouncing human rights defenders as terrorists or supporters of guerrilla groups. Such imputations, in situations of political tension or armed conflict, have serious consequences for the security of human rights defenders.

37. In this regard, 11 cases dealing with this issue were transmitted by the Special Representative to Governments. In one of the cases, a number of human rights defenders were receiving death threats via email allegedly coming from a paramilitary organization. The messages mentioned that these human rights defenders were "drug traffickers" and that their organizations were "recruitment centres for national and international subversion". In another case, it was reported that a message was sent to human rights organizations that defend the rights of sexual minorities, threatening them with death, calling them "mentally disturbed" and blaming them for spreading disease. The threats came at a time when police officers have allegedly been accused of torturing and threatening to kill persons

belonging to such minorities. Furthermore, in another communication, the Special Representative raised the issue of a member of an NGO who was reportedly arrested, interrogated and beaten because of her human rights activities. She was later detained in a psychiatric hospital despite the fact that she was perfectly healthy and had never been treated for mental illness.

38. Human rights activity is reviled in such terms as "damaging national interests", "disturbing social peace" and, especially the propagation of women's human rights, spreading "immorality" or "obscenity". In the case of women's human rights defenders, vilification of this nature by Government or non-State entities has resulted in physical attacks, threats and ostracism. NGOs found it difficult to rent premises for their offices, some defenders suffered unfair dismissal from their jobs and others experienced family pressure to give up their work as a result of such campaigns against them.

39. Experts who have criticized government health and environmental policies have suffered attacks on their professional integrity and competence. Human rights defenders exposing the hazards of unsecured nuclear waste sites, warning about economic and social consequences of the depletion of natural resources or disclosing governmental lapses in environmental accidents have often been targeted in this manner.

40. Finally, a growing number of States tend to create governmental NGOs in order to discredit the work of independent NGOs at the national and international level.

III. Implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

A. Impact of militarism on protection and promotion of human rights

41. The Special Representative wishes to draw the attention of the General Assembly to the distinct connection between militarism and the severity of human rights violations. Reliance of States upon military force and methods to combat situations of internal conflict or as a response to security concerns is increasing. Particular areas are designated as zones of military operation. Armed forces are given free reign in these regions with little civilian control over their operations. Paramilitary groups created by or operating with the tolerance of the military are considered responsible for a majority of violations of human rights documented in some countries.

42. In areas of conflict or political tension, emergency or special laws are imposed, suspending fundamental freedoms and restricting recourse to civilian courts. Denial of rights such as freedom of movement, association, assembly, expression and opinion, and access to information has serious implications for the promotion and protection of human rights. At the same time, the military and paramilitary forces commit human rights violations, often with impunity. Evidence of rape, torture, deaths in custody, extrajudicial executions and disappearances is well documented. Most of these violations result directly from the operations and intelligence and surveillance activities carried out by the military, and some because of the criminal activity of individual soldiers.

43. In this regard, 20 communications relating to violations of human rights committed by paramilitaries have been sent to Governments since the beginning of the mandate. In one of these cases, it has been reported that army-backed paramilitaries threatened two members of a human rights organization as well as their families in a continued campaign of intimidation and harassment. The alleged victims were receiving threatening telephone calls at their homes, reminding them that they were considered to be "military targets" and accusing them of being guerrilla collaborators. Both were members of an organization which has played a vital role in drawing international attention to human rights abuses committed by the guerrillas, security forces and paramilitaries.

44. The civilian population in areas of conflict lives in constant fear of being accused of collaborating with armed opposition groups and suffering attacks on life and deprivation of liberty as a consequence. Several cases of reprisals have been reported against the civilian population for activities of guerrilla groups. Some of the worst affected by this situation are indigenous groups and peasants. The dangers to which they are exposed have forced many to flee their homes, causing a significant scale of displacement. In one of the communications transmitted to Governments, the

Special Representative raised the case of the disappearance of an indigenous leader as well as the killing of others, which were allegedly committed by members of paramilitary groups. One of these leaders was publicly accused by the paramilitaries of being a supporter of the guerrillas.

45. The practice of trying civilians in military courts continues to be of serious concern. The procedures adopted by these courts are not sufficiently transparent and do not conform to the required standard of fairness. By and large, military courts have shown lack of any interest in or concern for human rights and fundamental freedoms. In one case transmitted by the Special Representative to the Government concerned, it was reported that a prominent human rights activist was convicted by a military court and sentenced to seven years in prison for having accepted foreign funds without authorization and for the dissemination of false information harmful to the country in question. In fact, it was alleged that these charges related to his activities as a human rights defender and that they were politically motivated.

46. The Working Group on Arbitrary Detention, in its report on civil and political rights of 9 November 2000 (E/CN.4/2001/14/Add.1), recalls that it "has on several occasions stated that military courts are principally to blame in cases of arbitrary detention" (Opinion No. 29/1999 (Sudan), para. 24).

47. At the same time military tribunals have become the cornerstones of impunity for perpetrators of human rights violations. Unacceptably light sentences imposed for gross violations of human rights cast doubt on the independence and impartiality of military tribunals and strengthen the perception that there is a deliberate design to conceal atrocities and shield members of the armed forces accused of committing them. It is in these conditions that human rights defenders find themselves at greatest risk in promoting human rights or exposing violations. They become targets of military and paramilitary groups that feel that human rights concerns interfere with their methods of operation and begin to see the work of defenders as a security risk. Human rights activists, journalists, lawyers and even judges find themselves on paramilitary death lists or subjected to different forms of threat, harassment and intimidation. The guerrilla groups add to the atmosphere of fear and intolerance, increasing the danger to human rights defenders. The number of human rights defenders reported to have become victims of extrajudicial killings, torture in military camps, abduction and disappearance is disturbingly high.

48. Even when civilian authority has been established or re-established, military presence still dominates the structures of authority and democratic culture becomes difficult to promote. It has been noted that in some countries national human rights institutions have not been given powers to investigate allegations of excesses committed by members of armed forces. There are also reports of armed forces systematically failing to comply with court orders concerning arbitrary actions that violate human rights. The military's continued lack of accountability is being questioned and there is a greater demand for transparency and public scrutiny of cases of human rights violations. In view of the adverse effects of militarism on the capacity of civil society to develop, there is an urgent need to remedy this lack of accountability.

49. The Special Representative acknowledges that measures have been adopted by some States for providing better protection to human rights defenders working in an environment of tension or conflict. It is expected that the creation of mechanisms for fighting impunity will also contribute to lessening the adverse effects of militarism on the situation of human rights violations. This will become possible only if the measures and mechanisms allow comprehensive monitoring of actions and operations of military and security forces in order to prevent human rights violations. The Special Representative emphasizes that respect for human rights and fundamental freedoms is not subject to conditions and circumstances. The absence of peace or security does not therefore excuse non-compliance with human rights principles.

B. Compatibility of national legislation with principles of the Declaration

50. Sufficient attention has not been given to modification of national laws that impair or contradict the purposes and principles of international instruments and commitments applicable in the field of human rights. This poses serious problems for the effective implementation of the Declaration. Numerous laws exist which are incompatible with international standards and have become tools for giving legitimacy to State actions that violate human rights. Despite

constitutional guarantees, rights have become subject to restrictions prescribed by law. It is these restrictions and the use of powers granted under such laws that have been widely used to curb and limit the activities of human rights defenders.

51. Article 17 of the Declaration provides that limitations can only be imposed on the exercise of rights for securing due recognition and respect for these rights, and for "meeting the just requirements of morality, public order and the general welfare in a democratic society". The exigencies of national security or emergency are therefore not recognized under the Declaration as grounds per se for restrictions on the exercise of fundamental freedoms. Article 22, paragraph 2, of the International Covenant on Civil and Political Rights does allow restrictions in the interest of national security or public safety, but only those which are necessary in a democratic society. Laws derogatory to the development of a democratic society cannot be compatible with the principles of human rights. At the same time, laws compatible with international standards do exist in some countries, but are not implemented in practice.

52. In one case brought to the attention of the Special Representative, it was alleged that, in a law on civil associations and institutions, several articles were hampering and prohibiting the work of NGOs in their function as human rights defenders. This law also contained sanctions against individuals engaging in human rights work without the approval of the Government.

53. The Special Representative reminds Governments of their prime responsibility and duty to promote, protect and implement human rights. For this purpose they are obliged to create legal guarantees that ensure the enjoyment of human rights and fundamental freedoms in practice. It may also be noted that the juridical framework for the implementation of rights referred to in the Declaration is "domestic law consistent with the Charter of the United Nations and other international obligations of the State in the field of human rights and fundamental freedoms" (article 3). States that do not have legislation conforming to these standards lack the juridical framework for the implementation of the Declaration. The promotion and protection of human rights and the security of defenders under such conditions would be of grave concern. The Special Representative urges Governments to consider this as a serious deficiency and to take all necessary steps to remedy the situation.

IV. Concluding remarks

54. The Special Representative is greatly impressed by the resilience of human rights defenders who continue to strive for the promotion and protection of rights despite adverse circumstances. While support for human rights and democracy in structures of the State is slow to emerge, or may even have suffered a reversal in some cases, civil society has demonstrated a strong resolve to resist authoritarianism and oppression. Civil society actors have played a significant role in inducing recognition by the State of the concepts of participatory democracy, transparency and accountability. This was not easily done and the international community must give due respect to the struggle through which human rights defenders and other civil society partners have been able to achieve some significant gains. Striving for effective means of protecting human rights defenders is recompense owed to them by the international community.

55. It is unfortunate that the Special Representative cannot report better progress in creating an enabling environment for the promotion of human rights and the protection of defenders. A major reason for this is the level of tension between the State and civil society. Repressive actions against human rights defenders, attacks on their credibility or labels of enemies of the State and threats to its security have inflamed these tensions. Governments need to increase their tolerance for dissent and cease to view human rights defenders as adversaries. Where Governments have opened the avenues of cooperation, civil society organizations have responded positively. Governments must, however, respect the independence and autonomy of these organizations and not attempt to co-opt them.

56. There is an obvious need for stronger political will and serious commitment to eliminate the many dangers that threaten human rights defenders in particular. The Special Representative finds the situation in some countries particularly difficult and is making efforts to seek better cooperation from them to improve the climate for the work of human rights defenders. She will continue in her efforts and hopes there will be more willingness on the part of Governments to give due consideration to the concerns communicated to them.

Notes

[1] The organizing committee of the Latin American Consultation on Human Rights Defenders was composed of: Comité de Defensa de Defensores, Red Nacional de Organismos Civiles de Derechos Humanos "Todos los Derechos para Todos", Mexico; Comité Ad Hoc para Defensores, Colombia; Amnesty International; and Human Rights Defenders Office, International Service for Human Rights, Switzerland.

[2] Article 8 of the Universal Declaration of Human Rights, article 9 of the Declaration on Human Rights Defenders, article 2, para. 3, of the International Covenant on Civil and Political Rights, article 25 of the American Convention on Human Rights, article 7 of the African Charter on Human and Peoples' Rights and article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms.

[3] CCPR/C/55/D/563/1993, paras. 8.3 and 10 (Nydia Erika Bautista de Arellana v. Colombia) and CCPR/C/56/D/540/1993, para. 10 (Ana Rosario Celis Laureano v. Peru).

[4] Annual report 1996, chap. VII, recommendation 1.

[5] See General Assembly resolution 53/144, annex.